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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,343	02/07/2002	Eric G. Suder	16312-P005P1	4155

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EXAMINER

NGUYEN, HANH N

ART UNIT	PAPER NUMBER
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2616

DATE MAILED: 06/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/072,343

Applicant(s)

SUDER ET AL.

Examiner

Hanh Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 16 and 30 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 8, 38 and 57 of copending Application No. 09/775,018. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

claim 1 of the application merely broadens the scope of claim 8 of the copending application by eliminating a telephony device including circuitry for monitoring an amount of data addressed to and received by the telephone device. It is well-known in the art that throttling data sent from the work station to the telephony device comprises monitoring data addressed to and received by the telephone device. Therefore, it would have been obvious to monitor data

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addressed to and received by the telephone device in order to throttle data sent from the workstation to the telephone device.

claim 16 of the application merely uses different claimed terminology “data sent from the workstation is addressed for transmission to a network via the the modem “ as compared with “data sent from the workstation is addressed for transmission to the data server” of claim 38 of the copending application. It is a well-known skill in the art to use modem or server in claim 16 of the application in order to transmit data to the IP network.

claim 30 of the application merely fails to include an IP telephone comprising a microphone and a speaker as compared with claim 57 of the copending application. It is a well-known skill in the art for an IP telephone to comprises a microphone and a speaker. Therefore, it would have been obvious for the claimed IP telephone of claim 30 in the application to have a microphone and a speaker.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 11-13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in

the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In claim 11, it is not clearly stated how the first throttling circuit operate in accordance with a mode level and what is referred as the mode level ?

Claims 12, 13 are rejected because they depend on claim 11 respectively.

Claims 30-34 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

According to specification, page 9 to page 11, line 10 which describes the IP telephone 313; and page 11, line 11 to page 13, line 15 which describes a DSP 801 in the IP telephone device 313, it is not clearly stated whether "circuitry for sufficiently throttling the data in response to a predetermined level being exceeded within the jitter buffer so that the communication of the information can be performed in real-time" as being claimed in claim 30 is found in this part of specification.

Claims 31-34 are rejected because they depend on claim 30 respectively.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-46 are rejected under 35 USC 103(a) as being unpatentable over Schuster et al. (US Pat. 6,650,619 B1) in view of O'Mahony (US Pat. 5,878,120).

In claims 1, Schuster et al. discloses an information handling system (an Internet telephone system in fig.1) comprising: a first network device (multimedia PC 24 transmitting media streams) coupled to a first telephony device (coupled with telephone 26, fig.1, see col.5, lines 30-43), wherein the first telephony device includes first circuitry for throttling data sent from the first network device (reducing or stopping transmitting signaling requests in response to a congestion state is detected by a device in the internet telephone system; wherein the reduction may take at any location in the system, see col. 13, lines 25-45 & col.14, lines 40-50). Schuster et al. does not disclose a first network device coupled to a modem through the first telephone device. O'Mahony discloses a modem DCE (see fig.1A-1D and fig.4) supporting simultaneous voice and data transmission. According to fig.4, non-voice (data) transmission is suspended (step 418) in order for the voice transmission to be carried out (step 420). See col.9, lines 10-20. Therefore, it would have been obvious to one ordinary skilled in the art to apply the teaching of O'Mahony into Schuster in order to couple the PC 24 to a modem via telephone 26 and throttle the data transmission sent from the multimedia PC 24 when a congestion is detected. The motivation is to enhance the voice transmission from the telephone.

In claim 35, as disclosed in the rejection of claim 1, Schuster et al. further discloses a wide area network (IP network 22, fig.1); increase a bandwidth in a connection coupling the first IP telephone the first modem (reducing the signaling request frees up resources to serve a higher rate of call request, see col.13, lines 42-47).

In claims 16 and 22, as disclosed by the rejections of claims 1 and 35, the limitations of claims 16 and 22 have been addressed in claims 1 and 35.

In claims 20 and 21, Schuster et al. discloses monitoring audio information being received by the telephone, wherein the monitoring step monitors a predetermined level within a jitter buffer (a management system 90 located at any location in a gateway, router, gatekeeper or any suitable device in the Internet system. The management 90 monitors media streams including audio transmitted from a work station and generates a control signal in response to a congestion detected, see col.17, lines 15-30).

In claims 26 and 32, Schuster et al. discloses IP telephone with level 2 switching circuitry (Internet PC comprises a processor programmed to switch to an emergency mode in which the Internet PC stops transmits signaling requests to server, see col.14, lines 40-47.

In claims 4, 5, 6, 17, 18, 33 and 36, Schuster et al. discloses the network is a TCP/IP network (IP network 22, fig.1), the first telephone using IP protocol (see col.5, lines 30-45 and col.6, lines 45-50).

In claims 2, 29, 38, as disclosed in the rejection of claim 1 which includes a modem disclosed by O'Mahony, Shuster et al. discloses a router (router 64, fig.1) coupled the first telephone device (telephone 26); a second network device (PC 30, fig.1) coupled to the router (router 64, fig.1) through a second telephone (telephone 28, fig.1). Therefore, it would have been obvious to couple the router between the telephone device and the modem in the Shuster et al.

In claims 3, 15, 42, as disclosed in the rejection of claims 1 and 2, Shuster et al. discloses the router(router 64, fig.1), the first telephone device (telephone 26) are coupled to each other via a network (IP network 22, fig.1). By combining with the modem of O' Mahony, it would

have been obvious to couple the modem with the telephone and the router via the IP network 22 of Schuster.

In claims 7, 19, 23 and 24, as disclosed in the rejection of claim 1, Schuster et al. further discloses the throttling step reduces a future amount of data (reducing call requests) from being transferred from the network device to the telephony device if an amount of data being transfered from the network device exceeds a predetermined threshold (in response to a potential congestion such as a threshold level of call requests is detected, see col.13, lines 10-20).

In claim 14, the limitation of this claim has been addressed in claim 1.

In claims 25 and 27, Schuster discloses, in fig.1, the network device is a work station (multimedia PC 24) and the telephone device (telephone 26) is a digital telephone (see col. 5, lines 33-40.

In claim 28, as disclosed in the rejection of claim 1, Schuster et al. further discloses in fig.1, a Multimedia PC transmitting media streams such as voice, video, data, audio and data to wide are network (IP network 22). Therefore, it would have been obvious to transmit multimedia data in the system of Schuster from PC 24 via modem to the IP network 22.

In claim 43, as disclosewd in the rejection of claim 1, Schuster et al. further discloses a data server (gate keeper 54) coupled to the hub (router 64). See fig.1.

In claim 44, as disclosewd in the rejection of claim 1, Schuster et al. further discloses data (video/ data) is communicated between the first network device(multi media PC 24, fig.1) and the data server (gatekeeper 54) over the WAN (IP network 22). See col.15, lines 62-67.

In claims 45 and 46, as disclosewd in the rejection of claim 1, Schuster et al. further discloses a multimedia server (gatekeeper 54) for communicating multimedia information

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(media streams) between the second IP telephone (PC 30) and PSTN (PSTN 46) over WAN (IP network 22). See fig.1.

In claim 39, as disclosed in the rejection of claim 1, Schuster et al. further discloses a third IP telephone (multi-media PC 32) coupled to the router (router 64). See fig.1.

In claim 37, as disclosed in the rejection of claim 1, Schuster et al. further discloses the multimedia information and the data occupy the same bandwidth between the first IP telephone and the first modem (The internet system discloses workload of signaling system being congested; therefore, media streams comprises data, voice, audio and video is transmitted from Internet phone 24 to the system occupy the same bandwidth, see col.13, lines 5-10).

In claim 40, Schuster et al. discloses the multimedia information (video, voice, data, audio) is communicated over the WAN (IP network 22) between the first and the second IP telephones (PC 24 and PC 30). See fig.1.

In claim 41, the limitations of this claim have been addressed in claims 1 and 35.

Claims 8-10 are rejected under 35 USC 103(a) as being unpatentable over Schuster et al. (US Pat. 6,650,619 B1) in view of O'Mahony (US Pat. 5,878,120), and further in view of Beyda et al. (US pat. No. 6,980,569 B1).

In claims 8, 9 with the rejection of claim 1 by Shuster and O'mahony above, Shuster et al. does not disclose the amount of data addressed to and received by the first telephony device falls below a predetermined threshold, wherein the predetermined threshold is a predetermined level within the jitter buffer. Beyda et al. discloses a circuit monitoring data received by the telephony device to determine if the data falls below a predetermined threshold within a jitter buffer (controller 110 (fig.3) of terminal 102 (fig.3) compares packet sizes with a preset

threshold in the jitter buffer 113 (fig.3). If the packet size is below the threshold, the packet is adjusted; see fig.4, steps 302, 306, 308 and 310; col.4, lines 30-50. Therefore, it would have been obvious to use the method of checking packet level in jitter buffer against a predetermined threshold of Beyda et al. into the system of Shuster to determine that the amount of data addressed to telephony device has been poor and increase voice data addressed to the telephone by throttling the data transmitted from the work station.

In claim 10, Schuster et al. does not discloses a plurality of throttling levels, but O'Mahony discloses, as in the rejection of claim 1, that the DCE suspends non-voice transmission (one level of throttling); or alternately waits until the non-voice transmission is completely transmitted before transmitting the voice signal (a second level of throttling). See fig.4step 418, col.9, lines 5-20. Therefore, it would have been obvious to use the multiple throttling levels of O' Mahony into Shuster in order to adaptively adjust or change the throttling levels.

Response to Arguments

Applicant's arguments with respect to claims 1-46 have been considered but are moot in view of the new ground(s) of rejection.

Applicant is noted that the obviousness-type double patenting rejection of Claims 1, 16 and 30 over claims 8, 38 and 57 of co-pending application 09/775,018 was issued on 2/10/06 and now is pending for a patent number.

Examiner would like to define how the word "throttling data" is defined in the specification. According to the specification, page 15, line 22 to page 16, line 20 and page 17, lines 6-12, throttling data can be performed using many different methods. One of which is to flood the network connection to a work station with a jabber in order to stop data from flowing between the telephone device and the work station. While flooding the network connection, no data is transmitted from the work station. During the flooding the network connection with jabber, the work station can re-transmits, if there is a collision, it will hold off for some amount of time, then re-transmits. The purpose of the invention as in page 17, lines 6-12 is to permits the telephone device from stopping the work station from sending data by causing collisions that none of the data can make its way through.

From the claim language interpretation above, the micro controler 202 of the data terminal equipment DCE 18 in O' Mahony dis closes that, after determining that a non-voice is being transmitted through, the micro controller transmits voice after suspending (temporary stops) the non-voice transmission (fig.4, step 418); or either waits until the non-voice data is completely transmitted, then the voice is transmitted. See col.9, lines 1-20. Examiner believes that "suspending none-voice" in O'Mahony is overcome the claimed "throttling data" in term of the specification.

According to the applicant's argument on page 11, which states that the network device is not coupled to the modem through the telephone device, Schuster et al. discloses, in fig.1, each of the gateways 12-20 can be replaced by IP telephone devices (see col.6, lines 47-52). For example in this fig.1, if the gateway 12 is replace by an IP telephone device, then the network device 24 should be coupled through the IP telephone 12/ gateway 12 before coupled to the ip

network 22. This suggests that the network device is coupled through the telephone device before being connected to another device. The missing modem in Schuster et al. can be made up by using the DCE 18 (modem; col.1, lines 20-25) in O'Mahony to couple to the network device through the telephone. Therefore, examiner believes that the combination of O'mahony in view of Schuster overcomes the limitations of claims 1, 16, 22, 35.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Shaffer et al. (US Pat. 6,683,889 B1) discloses apparatus and method for adaptive jitter buffers.

Smith et al. (US Pat. 6,682,298 B1) discloses Adaptive jitter Buffer for internet telephony.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh Nguyen whose telephone number is 571 272 3092. The examiner can normally be reached on Monday-Friday from 8:30 to 4:30. The examiner can also be reached on alternate

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Ahmad Matar, can be reached on 571 272 7488. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hanh Nguyen

A handwritten signature in black ink, appearing to read 'Hanh Nguyen', with a stylized, cursive script.

**HANH NGUYEN
PRIMARY EXAMINER**